# TRIBAL SUPREME COURT PROJECT MEMORANDUM

## JULY 14, 2016
## UPDATE OF RECENT CASES

The Tribal Supreme Court Project is part of the Tribal Sovereignty Protection Initiative and is staffed by the National Congress of American Indians (NCAI) and the Native American Rights Fund (NARF). The Project was formed in 2001 in response to a series of U.S. Supreme Court cases that negatively affected tribal sovereignty. The purpose of the Project is to promote greater coordination and to improve strategy on litigation that may affect the rights of all Indian tribes. We encourage Indian tribes and their attorneys to contact the Project in our effort to coordinate resources, develop strategy and prepare briefs, especially at the time of the petition for a writ of certiorari, prior to the Supreme Court accepting a case for review. You can find copies of briefs and opinions on the major cases we track on the NARF website (www.narf.org/sct/index.html).

October Term 2015 (OT15) ended in anti-climactic fashion with an equally divided (4-4) Court affirming the ruling of the U.S. Court of Appeals for the Fifth Circuit in *Dollar General v. Mississippi Band of Choctaw Indians.* The Fifth Circuit had firmly upheld tribal court jurisdiction over tort claims brought against a non-Indian corporation doing business on the reservation. This long anticipated "non-decision" does not create a national precedent for the exercise of tribal authority, but it avoids another stinging loss from a Supreme Court which refuses to recognize the lawful governing authority of Indian tribes over all persons who come on to Indian lands. There is no doubt that Justice Scalia's absence has affected many of the major cases, including *Dollar General*. More than likely, Dollar General will file a petition for rehearing, asking the Court for the opportunity to re-argue the case once a ninth Justice is confirmed by the U.S. Senate. For now, all of Indian country congratulates the Mississippi Band of Choctaw Indians and share in this positive outcome.

The close of OT15 provides us with an opportunity to review the work of the Tribal Supreme Court Project. In surprising fashion, in addition to the victory in *Dollar General*, Indian country scored unanimous (8-0) wins in both *U.S. v. Bryant* and *Nebraska v. Parker*. In *U.S. v. Bryant*, the Court reversed the decision of the U.S. Court of Appeals for the Ninth Circuit and held "[b]ecause Bryant's tribal-court convictions occurred in proceedings that complied with ICRA [the Indian Civil Rights Act] and were therefore valid when entered, use of those convictions as predicate offenses in a §117(a) prosecution does not violate the Constitution." In *Nebraska v. Parker*, the Court rejected arguments by the State of Nebraska and the Village of Pender to depart from its long-standing *Solem* test to evaluate whether a surplus land act diminished the Omaha Indian Reservation and to adopt a test of *de facto* diminishment based on whether an area has lost its "Indian character." Indian country suffered its only loss in *Menominee Tribe v. United States* where the Court found that equitable tolling is not available to preserve Indian self-determination contract claims that were not timely presented to a federal contracting officer when there are no extraordinary circumstances beyond the tribe's control. With the end of OT15, the overall win-loss record of Indian country before the Roberts' Court stands at 5-wins and 10-losses (marking a substantial improvement from the 0-wins and 7-losses from OT05 through OT10).

In addition to the four petitions granted review during OT15, twenty-one petitions in Indian law cases were denied review. This high number of total petitions (25) breaks the trend the Project has monitored over the past three terms in which the number of petitions in Indian law cases had declined significantly

(OT14-15 petitions; OT13–15 petitions; OT12–14 petitions). Overall, the 25 petitions in Indian law cases covered a variety of issues, including: Indian gaming disputes (4 petitions); religious concerns under RFRA, RLUIPA and NAGPRA (4 petitions); land and boundary disputes (3 petitions); tribal civil jurisdiction (2 petitions); and labor and employment disputes (2 petitions). Once again, the United States, States and local governments were parties before the Court in a significant number of Indian law cases (20 of the 25 petitions filed). State and local governments were not very successful in seeking review, appearing as petitioners in 6 cases with only one case granted (*Nebraska v. Parker*), but were successful as respondents in 5 cases in having review denied. The United States continued on its usual course, having review granted as petitioner in one case (*U.S. v. Bryant*), and having review denied as respondent in 8 cases. Indian tribes appeared as petitioners in 7 cases with one case granted review (*Menominee Tribe*), and as respondents in 8 cases with two granted review (*Dollar General* and *Nebraska v. Parker*).

One disturbing development occurred as OT15 drew to a close. Justice Thomas issued two back-to-back concurring opinions to express his continuing "concerns about [the Court's] precedents regarding Indian law." In *Puerto Rico v. Sancho Valle*, a divided Supreme Court rejected the argument that, similar to Indian tribes in the *Lara* case, Puerto Rico has independent "sovereign" authority to prosecute a crime that has already been charged in federal court, thus no violation of the Double Jeopardy Clause. After expressing his concerns regarding Indian law, Justice Thomas stated: "I cannot join the portions of the opinion concerning the application of the Double Jeopardy Clause to successive prosecutions involving Indian tribes." Then, in *U.S. v. Bryant*, Justice Thomas made clear that he questions both the source of inherent tribal sovereign authority and the constitutional basis for Congress's plenary authority over Indian affairs:

> Until the Court ceases treating Indian tribes as an undifferentiated mass, our case law will remain bedeviled by amorphous and ahistorical assumptions about the scope of tribal sovereignty. And, until the Court rejects the fiction that Congress possesses plenary power over Indian affairs, our precedents will continue to be based on the paternalistic theory that Congress must assume all encompassing control over the "remnants of a race" for its own good. [citing *United States v. Kagama*].

To date, the Court has not granted review in any new Indian law cases for consideration next term. The Court's long conference is scheduled for Monday, September 26, 2016, which marks the beginning of October Term 2016 (OT16).

## INDIAN LAW CASES DECIDED BY THE SUPREME COURT

**DOLLAR GENERAL CORPORATION V. MISSISSIPPI BAND OF CHOCTAW INDIANS (NO. 13-1496)** – On June 23, 2016, an equally divided (4-4) Supreme Court affirmed the ruling of the U.S. Court of Appeals for the Fifth Circuit in *Dollar General v. Mississippi Band of Choctaw Indians* which upheld tribal court jurisdiction over a non-Indian corporation doing business on the reservation. In the one-line Per Curiam opinion, the Court states: "The judgment is affirmed by an equally divided Court." This "non-decision" will not create a national precedent for the exercise of tribal authority, but it does avoid another stinging loss from a Supreme Court which refuses to recognize the lawful governing authority of Indian tribes over all persons who come on to Indian lands. There is no doubt that Justice Scalia's absence affected the outcome. More than likely, Dollar General will file a petition for rehearing, asking the Court for the opportunity to re-argue the case once a ninth Justice is confirmed by the U.S. Senate. For now, all of Indian country congratulates the Mississippi Band of Choctaw Indians and share in this positive outcome.

Background: On June 15, 2015, contrary to the recommendation of the U.S. Solicitor General to deny cert, the Court granted review. The Dollar General store is located on tribal trust land within the reservation. The store agreed to participate in a youth job training program operated by the Tribe. A tribal member who participated in the youth program and his parents brought an action in Tribal court alleging that the young man was sexually assaulted by the store's manager. The Supreme Court of the Mississippi Band of Choctaw Indians, the U.S. Federal District Court for the Southern District of Mississippi, and the U.S. Court of Appeals for the Fifth Circuit had all upheld the Tribal Court's jurisdiction over the tort claims against Dollar General.

The Project worked closely with the attorneys for the Tribe to develop and coordinate a robust amicus brief strategy in support of Tribal court jurisdiction resulting in eight amicus briefs in support of the Tribe: (1) Amicus Brief of the United States; (2) Amicus Brief of the State of Mississippi (joined by Colorado, New Mexico, North Dakota, Oregon and Washington); (3) Amicus Brief of NCAI (joined by USET, ITAA, CTAG, and 58 federally-recognized Indian tribes); (4) Amicus Brief of National American Indian Court Judges Association (joined by numerous Tribal and Inter-tribal Court Systems); (5) Amicus Brief of the Oklahoma Tribes; (6) Amicus Brief of the National Indigenous Women's Resource Center (joined by over 100 Domestic Violence and Sexual Assault Organizations); (7) Amicus Brief of Historical and Legal Scholars; and (8) Amicus Brief of the American Civil Liberties Union.

**UNITED STATES V. BRYANT (NO. 15-420)** – On June 13, 2016, the Court issued a unanimous (8-0) opinion in *U.S. v. Bryant* and reversed the decision of the U.S. Court of Appeals for the Ninth Circuit, which had held (in direct conflict with the Eighth and Tenth Circuits) that it is constitutionally impermissible (violation of Sixth Amendment right to counsel) to use uncounseled tribal court convictions to establish an element of the offense as a habitual domestic violence offender in a subsequent federal prosecution under 18 U.S.C. § 117(a). Justice Ginsberg, writing for the Court, disagreed and held that "[b]ecause Bryant's tribal-court convictions occurred in proceedings that complied with ICRA and were therefore valid when entered, use of those convictions as predicate offenses in a §117(a) prosecution does not violate the Constitution." However, in his concurring opinion, Justice Thomas made clear that he has ongoing concerns regarding the Court's precedents in Indian law. Justice Thomas appears to question both the source of inherent tribal sovereign authority and the constitutional basis for Congress's plenary authority over Indian affairs, stating:

> Until the Court ceases treating Indian tribes as an undifferentiated mass, our case law will remain bedeviled by amorphous and ahistorical assumptions about the scope of tribal sovereignty. And, until the Court rejects the fiction that Congress possesses plenary power over Indian affairs, our precedents will continue to be based on the paternalistic theory that Congress must assume all encompassing control over the "remnants of a race" for its own good. [citing *United States v. Kagama*].

This is an important victory for Indian country, and was the result of an effective coordinated strategy. The Project worked with the Solicitor General's office and prepared three amicus briefs in support of the United States: (1) Amicus Brief of the National Congress of American Indians discussing the reliability of tribal court decisions and deference to Congress; (2) Amicus Brief of the National Indigenous Women's Resource Center focused on the severe problem of escalation of repeat domestic violence offenders; and (3) Amicus Brief of former U.S. Attorneys supporting the need for the habitual domestic violence statute as an important prosecutorial tool to protect Indian women and children within Indian country.

**NEBRASKA V. PARKER (NO. 14-1406)** – On March 22, 2016, the Court issued a unanimous (8-0) opinion written by Justice Thomas which affirmed the decisions of the U.S. Court of Appeals for the Eighth Circuit and the U.S. District Court for the District of Nebraska which had held that an 1882 Act of Congress did not diminish the Omaha Indian Reservation. The State of Nebraska and the Village of Pender had challenged whether the establishments in Pender which serve alcoholic beverages are subject to the Omaha Tribe's liquor licensing and tax regulations. The Court declined the invitation of the State and Village to depart from its long-standing *Solem* test to evaluate whether a surplus land act diminished a federal Indian reservation and to adopt a test of *de facto* diminishment based on whether an area has lost its "Indian character." The Court reiterated the first prong of the *Solem* test that only Congress can diminish the boundaries of an Indian reservation and that its intent to do so must be clear from the statutory text and history. In this case, the Court found that the 1882 Act bore none of the textual "hallmarks of diminishment" and the history surrounding its passage does not unequivocally support a finding of diminishment. However, at the conclusion of the opinion, the Court cited to *City of Sherrill* and stated: "Because petitioners have raised only the single question of diminishment, we express no view about whether equitable considerations of laches and acquiescence may curtail the Tribe's power to tax the retailers of Pender in light of the Tribe's century-long absence from the disputed lands."

The Project worked closely with the attorneys for the Omaha Tribe and prepared two amicus briefs in support: (1) Amicus Brief of the National Congress of American Indians (joined by two intertribal organizations and twenty Indian tribes) focused on the negative impacts of a *de facto* diminishment rule; and (2) Amicus Brief of Historical and Legal Scholars clarifying the legal and historical circumstances surrounding treaty-making and allotment statutes.

**MENOMINEE INDIAN TRIBE OF WISCONSIN V. UNITED STATES (NO. 14-510)** – On January 25, 2016, the Court issued its decision in *Menominee Indian Tribe v. United States* to resolve a conflict between the U.S. Courts of Appeals for the DC Circuit and the Federal Circuit regarding the appropriate standard for obtaining equitable tolling of the statute of limitations for filing claims against the Indian Health Service for unpaid contract support costs. In a unanimous (9-0) opinion written by Justice Alito, the Court held that equitable tolling is not available to preserve contract claims that were not timely presented to a federal contracting officer because there were no extraordinary circumstances beyond the tribe's control. NARF, on behalf of the Project, prepared and filed an amicus brief on behalf of NCAI which focused on the Indian Self-Determination Act as the "core" of the historic and unique relationship between the United States and tribes and the need for the courts to consider this relationship as a factor within its equitable tolling analysis in the context of contract support cost claims.

Background: On June 30, 2015, following the recommendation of the United States to grant cert, the Court granted review of a decision by the U.S. Court of Appeals for the District of Colombia which held that the Tribe did not establish the necessary grounds for obtaining equitable tolling of the statute of limitations for filing claims against the Indian Health Service for unpaid contract support costs. The Tribe maintains that this decision is in direct conflict with the Federal Circuit's 2012 decision in *Arctic Slope Native Ass'n Ltd. v. Sebelius (ASNA).* In its response, the United States recommended that the Court grant cert to address "the uncertainty created by the Federal Circuit's erroneous decision in *ASNA*—and the increasing volume of untimely claims inspired by it—[which] have con-founded the government's attempts to achieve orderly resolution of the ongoing litigation over tribal contract support costs. . . . This Court's review is warranted to resolve that conflict, as well as to ensure that the proper equitable tolling framework is applied to Contract Disputes Act claims generally."

## PETITIONS FOR A WRIT OF CERTIORARI PENDING

Currently, the following petitions for a writ of certiorari have been filed in Indian law and Indian law-related cases and are pending before the Court:

**KELSEY V. BAILEY (NO. 16-5120)** – On July 7, 2016, a member of the Little River Band of Ottawa Indians filed a petition seeking review of a decision by the U.S. Court of Appeals for the Sixth Circuit which upheld his criminal conviction in tribal court for misdemeanor sexual assault against a tribal employee at the Band's Community Center which is located on land owned by the Tribe but outside its reservation boundaries. The Tribe's brief in opposition is due on August 8, 2016.

**FLUTE V. U.S. (NO. 15-1534)** – On June 20, 2016, a group of Native Americans who are descendants of the victims of the 1864 Sand Creek Massacre filed a petition seeking review of a decision by the U.S. Court of Appeals for the Tenth Circuit which held that their action for an accounting of funds held by the federal government in trust for payment of reparations to their ancestors is barred by the doctrine of sovereign immunity. The U.S. brief in opposition is due on July 25, 2016.

**LEWIS V. CLARKE (NO. 15-1500) –** On June 13, 2016, a petition was filed seeking review of a decision of the Connecticut Supreme Court which held that doctrine of tribal sovereign immunity extends to an employee of the tribe who is acting within the scope of his employment. The brief in opposition was filed on July 13, 2016.

**TUNICA-BILOXI GAMING AUTHORITY V. ZAUNBRECHER (NO. 15-1486) –** On May 26, 2016, a petition was filed seeking review of a decision by the Louisiana Court of Appeals which held that state courts have subject matter jurisdiction over a tort suit against individual tribal employees for alleged acts of negligence in the course and scope of their employment with the Tribe at the tribal-owned casino located on tribal trust land. The brief in opposition was due on July 11, 2016.

**PRO-FOOTBALL, INC. V. BLACKHORSE (NO. 15-1311)** – On April 25, 2016, in response to a petition filed by the United States in *Lee v. Tam,* (No. 15-1293), seeking review of an en banc decision of the U.S. Court of Appeals for the Federal Circuit which held that the disparagement clause in § 2(a) of the Lanham Act is facially invalid under the free speech clause of the First Amendment, Pro-Football, Inc. filed a petition for writ of certiorari before judgment (by the Fourth Circuit) asking that if the Court grants review in *Tam,* then the Court should also grant review in *Pro-Football, Inc. v. Blackhorse* as "a necessary and ideal companion to *Tam.*" The response briefs of Amanda Blackhorse and the United States were filed on June 27, 2016, the petition has been scheduled for conference on September 26, 2016..

## PETITIONS FOR WRIT OF CERTIORARI DENIED/DISMISSED

The Court has denied or dismissed the following petitions for writ of certiorari in Indian law cases.

**JENSEN V EXC INC. (NO. 15-64)** – On June 28, 2016, the Court denied review of a petition seeking review of a decision by the U.S. Court of Appeals for the Ninth Circuit which held that, under *Strate v. A-1 Contractors*, the Navajo Nation Tribal Courts may not exercise adjudicatory jurisdiction over a highway accident that occurred on an Arizona state highway within the exterior boundaries of the Navajo Reservation.

**SOARING EAGLE CASINO RESORT V. NLRB (NO. 15-1034)** – On June 27, 2016, the Court denied review of a petition filed by the Saginaw Chippewa Tribe seeking review of a decision of the U.S. Court of Appeals for the Sixth Circuit, issued twenty-two days after a different panel's decision in *Little River Band*, which concluded that even though it disagreed with the result in *Little River Band* it was bound by circuit precedent and affirmed the NLRB's jurisdiction over the Casino.

**LITTLE RIVER BAND OF OTTAWA INDIANS V. NLRB (NO. 15-1024)** – On June 27, 2016, the Court denied review of a petition by the Little River Band seeking review of a 2-1 decision by the U.S. Court of Appeals for the Sixth Circuit which adopted the *Tuscarora-Coeur d'Alene* framework, held that the National Labor Relations Act applies to the Tribe's casino, and upheld the NLRB's order for the Tribe to rescind its labor laws.

**SHINNECOCK INDIAN NATION V. NEW YORK (NO. 15-1215)** – On June 27, 2016, the Court denied review of a petition filed by Shinnecock Indian Nation filed seeking review of a decision by the U.S. Court of Appeals for the Second Circuit which held that, under the *Cayuga* "laches" defense, the Tribe's Indian Non-Intercourse Act land claims must be dismissed by the district court *ab initio.*

**PAUMA BAND OF LUISENO MISSION INDIANS V. CALIFORNIA (NO. 15-1291)** – On June 27, 2016, the Court denied review of a petition filed by the Pauma Band seeking review of a decision by the U.S. Court of Appeals for the Ninth Circuit which rescinded the state-tribal gaming compact (based on the State's misrepresentation of a material fact), awarded restitution to the tribe in the amount of $36.2 million, but held that the tribe could not pursue a claim for latent bad faith negotiation against the State which would allow the parties to negotiate a successor compact under court supervision.

**CALIFORNIA V. PAUMA BAND OF LUISENO MISSION INDIANS (NO. 15-1185)** – On June 27, 2016, the Court denied review of a petition filed by the State of California seeking review of a decision by the U.S. Court of Appeals for the Ninth Circuit which found that the State had misrepresented a material fact in negotiating a state-tribal gaming compact and held that the Tribe was entitled to restitution in the amount of $36.2 million as an equitable remedy which fell within the waiver of sovereign immunity under the compact.

**SEMINOLE TRIBE V. STRANBURG (NO. 15-1064)** – On June 13, 2016, the Court denied review of a petition filed by the Seminole Tribe which sought review of a decision by the U.S. Court of Appeals for the Eleventh Circuit which held that, although the Tribe is not subject to Florida's Rental Tax, the Tribe is subject to Florida's Utility Tax since the legal incidence of the tax does not fall directly on the Tribe and the Tribe failed to demonstrate that the tax is pre-empted by federal law.

**LA CUNA DE AZTLAN V. UNITED STATES DEPARTMENT OF THE INTERIOR (NO. 15-826)** – On June 6, 2016, the Court denied review of petition filed by La Cuna De Aztlan Sacred Sites Protection Circle Advisory Committee which sought review of a decision by the U.S. Court of Appeals for the Ninth Circuit which affirmed the district court and dismissed their claim under Religious Freedom Restoration Act. The petitioners' lawsuit challenged the federal government's actions in connection with a major solar-electricity generation project located on federal public lands in California. The Ninth Circuit held that the petitioners failed to demonstrate that denial of access to the site "substantially burdens" the exercise of their religion.

**CITIZENS AGAINST CASINO GAMBLING V. CHAUDHURAI (NO. 15-780)** – On May 31, 2016, the Court denied review of a petition filed by Citizens Against Casino Gambling in Erie County (New York) who sought review of a decision of the U.S. Court of Appeals for the Second Circuit which affirmed the district court dismissal of their complaint. The Second Circuit held that under the Seneca Nation Settlement Act, Congress intended the Buffalo Parcel to be subject to tribal jurisdiction, and upheld the decision of the Department of the Interior and the National Indian Gaming Commission that the Buffalo Parcel is eligible for class III gaming under the Indian Gaming Regulatory Act.

**KNIGHT V. THOMPSON (NO. 15-999)** – On May 2, 2016, the Court denied review of a petition filed by a group of Native American inmates seeking review a decision of the U.S. Court of Appeals for the Eleventh Circuit which, on remand, simply affirmed its prior decision in favor of prison officials in Alabama who refused to grant a religious exemption from their restrictive grooming policy to allow Native Americans to wear long hair consistent with their Native religious beliefs. Last term, the Court had issued a "GVR" (petition granted, judgment vacated and case remanded) in *Knight* for further consideration in light of its unanimous decision in *Holt v. Hobbs* (Arkansas violated the Religious Land Use and Institutionalized Persons Act where its grooming policy did not allow beards and it refused to grant a religious exemption to an inmate whose Muslim religion required him to wear a beard).

**ZEPEDA V. UNITED STATES (NO. 15-675)** – On April 25, 2016, the Court denied review of a petition filed by Damien Zepeda, a criminal defendant, who sought an en banc opinion of the U.S. Court of Appeals for the Ninth Circuit which held that under the Indian Major Crimes Act, the federal government must prove Indian status by demonstrating that the defendant: (1) has some quantum of Indian blood; and (2) is a member of, or is affiliated with, a federally recognized tribe. The Ninth Circuit held further that a defendant must have been an Indian at the time of the charged conduct, and that, under the second prong, a tribe's federally recognized status is a question of law to be determined by the trial judge.

**CROW ALLOTTEES V. UNITED STATES (NO. 15-779)** – On April 25, 2016, the Court denied a petition filed by Crow Indian Allottees who sought review of a decision by the Montana Supreme Court dismissing their objections to the Crow Water Compact and denying their motion to stay proceeding pending federal court review of the federal questions raised by the individual Allottees.

**ALASKA V. ORGANIZED VILLAGE OF KAKE (NO. 15-467)** – On March 28, 2016, the Court denied the petition filed by the State of Alaska seeking review of an Indian law-related en banc decision by U.S. Court of Appeals for the Ninth Circuit which held that, under the Administrative Procedures Act, the U.S. Department of Agriculture must provide a reasoned explanation for its 2003 decision to reverse its earlier determination that exempting the Tongass National Forest from the 2001 Roadless Rule (limiting road construction and timber harvesting in national forests) "would risk the loss of important roadless area [ecological] values."

**WASATCH COUNTY V. UTE INDIAN TRIBE (NO. 15-640); UINTAH COUNTY V. UTE INDIAN TRIBE (NO. 15-641)** – On March 21, 2016, the Court denied review of petitions filed by Wasatch County and Uintah County seeking review of a decision by U.S. Court of Appeals for the Tenth Circuit which reversed the district court and held that the Tribe is entitled to a preliminary injunction to enjoin county officials from prosecuting tribal members for crimes committed within the undiminished portions of the reservation in conformity with the Supreme Court's 1994 decision in *Hagen v. Utah*.

**WHITE V. REGENTS OF THE UNIVERSITY OF CALIFORNIA (NO. 15-667)** – On January 25, 2016, the Court denied review of a petition filed by three scientists at the University of California seeking review of a

decision by the U.S. Court of Appeals for the Ninth Circuit which dismissed their claims under the Native American Graves Protection and Repatriation Act based on their inability to join the Kumeyaay Cultural Repatriation Committee (consortium of 12 tribes) as a "required party" under Rule 19 of the Federal Rules of Civil Procedure based on the doctrine of tribal sovereign immunity.

**DECKER V. UNITED STATES (NO. 15-733)** – On January 11, 2016, the Court denied review of a petition filed by an Indian criminal defendant seeking review of a decision by the U.S. Court of Appeals for the Ninth Circuit which affirmed his conviction and rejected his argument that the federal prosecutor had constructively amended the grand jury indictment in violation of the Fifth Amendment.

**TWO SHIELDS V. WILKINSON (NO. 15-475)** – On December 14, 2015, the Court denied review of a petition filed by individual Indian allottees—victims of an alleged scheme by certain private individuals and businesses to induce the United States to approve below-market oil and gas leases—seeking review of a decision by the U.S Court of Appeals for the Eighth Circuit which dismissed their case based on their failure to join the United States as a "required party" under Rule 19 of the Federal Rules of Civil Procedure (inability to join based on sovereign immunity).

**WISCONSIN V HO-CHUNK NATION (NO. 15-114)** – On October 5, 2015, the Court denied review of a petition filed by the State of Wisconsin seeking review of a decision by the U.S. Court of Appeals for the Seventh Circuit which reversed the federal district court, found that the state did not criminalize non-banked poker and held that the Indian Gaming Regulatory Act does not permit the state to interfere with Class II poker on tribal land.

**TORRES V. SANTA YNEZ BAND OF CHUMASH INDIANS (NO. 14-1521)** – On October 5, 2015, the Court denied review of a petition filed by a non-Indian contractor seeking review of an unpublished decision by the U.S. Court of Appeals for the Ninth Circuit which affirmed the district court's finding that the bankruptcy court did not abuse its discretion in denying the contractor's motion for sanctions after concluding that the Santa Ynez Band of Chumash Indians did not act in bad faith by filing a proof of claim in his bankruptcy proceedings.

**SAC AND FOX NATION V. BOROUGH OF JIM THORPE (NO. 14-1419)** – On October 5, 2015, the Court denied review of a petition filed by the Sac and Fox Nation, William Thorpe and Richard Thorpe (the sons of Jim Thorpe) seeking review of a decision by the U.S. Court of Appeals for the Third Circuit which reversed the U.S. District Court for the Middle District of Pennsylvania. The Third Circuit had concluded that although the Borough of Jim Thorpe technically meets the definition of "museum" under NAGPRA, "Congress could not have intended the kind of patently absurd result that would follow from a court resolving a family dispute by applying NAGPRA to Thorpe's burial in the Borough under the circumstances here."

**OKLAHOMA V. HOBIA (NO. 14-1177)** – On October 5, 2015, the Court denied review of a petition filed by the State of Oklahoma seeking review of a decision by the U.S. Court of Appeals for the Tenth Circuit which held that, in light of *Bay Mills*, the State has failed to state a valid claim for relief against the Kialegee Tribal Town under IGRA and a state-tribal gaming compact. The question presented was: "Does *Michigan v. Bay Mills*, 134 S.Ct. 2024 (2014), require dismissal of a State's suit to prevent tribal officers from conducting gaming that would be unlawful under the Indian Gaming Regulatory Act and a state-tribal gaming compact when (1) the suit for declaratory and injunctive relief has been brought against tribal officials - not the tribe; (2) the gaming will occur in Indian country on the land of another

tribe; and (3) the state-tribal compact's arbitration provision does not require arbitration before filing suit?"

## CONTRIBUTIONS TO THE TRIBAL SUPREME COURT PROJECT

As always, NCAI and NARF welcome general contributions to the Tribal Supreme Court Project. Please send any general contributions to NCAI, attn: Sam Owl, 1516 P Street, NW, Washington, DC 20005.
**Please contact us if you have any questions or if we can be of assistance: John Dossett, NCAI General Counsel, 202-255-7042 (jdossett@ncai.org), or Richard Guest, NARF Senior Staff Attorney, 202-785-4166 (richardg@narf.org).**